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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PLANNED PARENTHOOD FEDERATION OF
AMERICA, INC., et al.;

Plaintiffs,

v.

CENTER FOR MEDICAL PROGRESS, et al.;

Defendants.

Case No. 3:16-cv-00236-WHO

**DECLARATION OF SHARON D.
MAYO IN SUPPORT OF
PLAINTIFFS' ADMINISTRATIVE
MOTION TO FILE DOCUMENTS
UNDER SEAL**

EXHIBIT 1: REDACTED

Judge: Hon. William H. Orrick

1 I, Sharon D. Mayo, declare:

2 1. I am an attorney admitted to practice in the State of California and before this Court.
3 I am a Senior Counsel of the law firm of Arnold & Porter Kaye Scholer LLP, and an attorney for
4 Plaintiffs Planned Parenthood Federation of America, Inc.; Plaintiff Planned Parenthood: Shasta-
5 Diablo, Inc. dba Planned Parenthood Northern California; Planned Parenthood Mar Monte, Inc.;
6 Planned Parenthood of The Pacific Southwest; Planned Parenthood Los Angeles; Planned
7 Parenthood Orange and San Bernardino Counties, Inc.; Planned Parenthood of Santa Barbara,
8 Ventura and San Luis Obispo Counties, Inc; Planned Parenthood Pasadena and San Gabriel Valley,
9 Inc., Planned Parenthood of the Rocky Mountains, Planned Parenthood Gulf Coast (collectively
10 “Plaintiffs”) in the above-captioned action. I make this Declaration upon personal knowledge,
11 excepted as otherwise stated, and, if called upon to testify, I could and would testify competently
12 hereto.

13 The unredacted version of **PLAINTIFFS’ OPPOSITION TO DEFENDANTS THE**
14 **CENTER FOR MEDICAL PROGRESS, BIOMAX PROCUREMENT SERVICES, DAVID**
15 **DALEIDEN, AND GERARDO ADRIAN LOPEZ’S MOTION TO SET A BOND AMOUNT**
16 **TO STAY ENFORCEMENT OF THE JUDGMENT** (attached hereto as Exhibit 1) contains
17 citations to declarations which were previously lodged under seal. Counsel for Plaintiffs request that
18 the Court accept for this document for filing under seal so that counsel may remain in compliance
19 with the requirements of the Court’s Order of December 11, 2017 at Docket Entry No. 193, the
20 Court’s Protective Order at Docket Entry No. 117, and Civil Local Rule 79-5. The Protective Order
21 states, “Without written permission from the Designating Party or a Court order secured after
22 appropriate notice to all interested persons, a Party may not file any Protected Material in the public
23 record in this Action. A Party that seeks to file under seal any Protected Material must comply with
24 Civil Local Rule 79-5.” Docket Entry No. 117, at 20.

Exhibit 1

1 I, Sharon D. Mayo, declare:

2 1. I am an attorney admitted to practice in the State of California and before this Court.
3 I am a Senior Counsel of the law firm of Arnold & Porter Kaye Scholer LLP, and an attorney for
4 Plaintiffs Planned Parenthood Federation of America, Inc.; Plaintiff Planned Parenthood: Shasta-
5 Diablo, Inc. dba Planned Parenthood Northern California; Planned Parenthood Mar Monte, Inc.;
6 Planned Parenthood of The Pacific Southwest; Planned Parenthood Los Angeles; Planned
7 Parenthood Orange and San Bernardino Counties, Inc.; Planned Parenthood of Santa Barbara,
8 Ventura and San Luis Obispo Counties, Inc; Planned Parenthood Pasadena and San Gabriel Valley,
9 Inc., Planned Parenthood of the Rocky Mountains, Planned Parenthood Gulf Coast (collectively
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11 excepted as otherwise stated, and, if called upon to testify, I could and would testify competently
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UNITED STATES DISTRICT COURT

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SAN FRANCISCO DIVISION

PLANNED PARENTHOOD FEDERATION
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Defendants.

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Case No. 3:16-cv-00236-WHO

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS THE CENTER FOR
MEDICAL PROGRESS, BIOMAX
PROCUREMENT SERVICES, DAVID
DALEIDEN, AND GERARDO ADRIAN
LOPEZ'S MOTION TO SET A BOND
AMOUNT TO STAY ENFORCEMENT OF
THE JUDGMENT**

No Hearing Scheduled

Judge: Honorable William H. Orrick, III

PUBLIC REDACTED VERSION

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INTRODUCTION

The ordinary rule under Federal Rule of Civil Procedure 62 is that a judgment becomes enforceable 30 days after its entry, and in order to stay execution pending appeal, a defendant must post a supersedeas bond sufficient to cover the amount of the judgment plus any interest, costs, and fees likely to accrue on appeal. The purpose of this bond requirement is to prevent a stay of execution from harming victorious plaintiffs by prejudicing their ability to collect on the judgment entered in their favor. Courts accordingly waive or alter the bond requirement only where, under the circumstances, a full bond is not necessary to protect the plaintiff's ability to collect.

Here, the jury found the seven defendants liable for millions of dollars in damages as a result of their multiyear fraudulent scheme. The Court also entered injunctive relief against All Defendants,¹ and attorneys' fees will eventually increase the amount of the judgment substantially. Nevertheless, four of the seven defendants—CMP, BioMax, Daleiden, and Lopez (the "Moving Defendants")—now ask the Court to depart from the ordinary bond rule by reducing the amount of the supersedeas bond down to \$0.00, or at most to \$468,361. Moving Defendants do not suggest that the *other* three defendants—Newman, Rhomberg, and Merritt (the "Nonmoving Defendants")—could not and should not post a supersedeas bond. And Moving Defendants' arguments as to themselves are self-defeating: they argue that the Court should completely or substantially waive the bond requirement so that they can spend their allegedly limited assets paying for future legal fees in other litigation—including affirmative civil litigation that certain of the Moving Defendants have brought against Plaintiff PPFA and others associated with Plaintiffs about the same facts that this Court already tried. But Moving Defendants' desire to spend their assets not on this Court's judgment against them but on their continued campaign against Planned Parenthood only *strengthens* the need to follow the ordinary rule and require the posting of a full supersedeas bond. Moving Defendants' motion should be denied.

RELEVANT PRIOR PROCEEDINGS

Plaintiffs filed this action on January 14, 2016, asserting claims under a variety of

¹ Unless otherwise noted, capitalized terms herein shall have the same definition as set forth in Section V(1) of the Court's April 29, 2020 Order Resolving Unfair Competition Claim and Entering Judgment (Dkt. No. 1073 at 39-40).

1 agreements and state and federal laws. Dkt. No. 59. On August 23, 2019, the Court granted
2 Plaintiffs' motion for summary judgment as to the claims for breach of the PPFA Exhibitor
3 Agreements and for trespass. Dkt. No. 753. On November 15, 2019, after trial, the jury found
4 defendants liable on eight additional claims—fraud, breach of the NAF Exhibitor Agreements and
5 PPGC Nondisclosure Agreement, violations of RICO, violations of California Penal Code § 632,
6 and violations of the federal, Florida and Maryland wiretapping acts. Dkt. No. 1016.

7 On April 29, 2020, the Court entered judgment against All Defendants for a total of
8 \$2,425,084. Of that, All Defendants are jointly and severally liable for a total of \$2,280,083.
9 Moving Defendants except Lopez are jointly and severally liable for an additional \$1 in nominal
10 damages. The jury also awarded substantial punitive damages against All Defendants except
11 Lopez, including Moving Defendants CMP (\$400,000), BioMax (\$200,000), and Daleiden
12 (\$125,000), as well as Nonmoving Defendants Rhomberg (\$70,000), Newman (\$50,000). and
13 Merritt (\$25,000). *Id.* The Court also issued injunctive relief against All Defendants. *Id.*²

14 On May 13, 2020, Moving Defendants filed the instant motion, asking the Court to stay
15 enforcement of the judgment without requiring the posting of any supersedeas bond at all, or, in the
16 alternative, upon the posting of a bond for just \$468,361—calculated as the total monetary liability
17 of the Moving Defendants (\$2,280,084) less nominal damages (\$1), punitive damages (\$725,000),
18 the trebled portion of the damages awarded under RICO (\$936,722), and the statutory damages
19 awarded under the wiretapping statutes (\$150,000). Mot. at 6. Plaintiffs have consented not to seek
20 execution of the judgment until the instant motion is adjudicated.

21 ARGUMENT

22 I. PLAINTIFFS ARE ENTITLED TO BEGIN EXECUTING THIS COURT'S 23 JUDGMENT UNLESS MOVING DEFENDANTS POST A FULL SUPERSEDEAS 24 BOND OR DEMONSTRATE THAT A BOND IS UNNECESSARY TO PROTECT 25 PLAINTIFFS' ABILITY TO COLLECT.

26 Under Federal Rule of Civil Procedure 62(a), a district court's judgment generally becomes
27 final and enforceable 30 days after judgment is entered. Fed. R. Civ. P. 62(a). In the ordinary course,

28 ² The injunction runs against Lopez only to the extent he is acting in concert or participation with
the other defendants.

1 to stay the execution of a judgment pending appeal, the appellant must post a supersedeas bond. *See,*
2 *e.g., Cotton ex rel. McClure v. City of Eureka, Cal.*, 860 F. Supp. 2d 999, 1025 (N.D. Cal. 2012);
3 *Abbywho, Inc. v. Interscope Records*, No. CV 06-06724 MMM (JTLx), 2008 WL 11406049, at *2
4 (N.D. Cal. Aug. 25, 2008) (“When a money judgment is involved, one gets a stay by posting a bond.”).
5 “The stay takes effect when the court approves the bond.” Fed. R. Civ. P. 62(d).

6 The purpose of the supersedeas bond requirement is to protect a prevailing party “from the
7 risk of a later uncollectible judgment, and compensate them for any loss resulting from the stay of
8 execution.” *Abbywho* 2008 WL 11406049, at *3 (citing *NLRB v. Westphal*, 859 F.2d 818, 819 (9th
9 Cir. 1988)). “Because [a] stay [of execution] operates for the appellant’s benefit and deprives the
10 appellee of the immediate benefits of his judgment, a full supersedeas bond should be the requirement
11 in normal circumstances.” *Rivas v. Knight Transp., Inc.*, No. CV 15-05793-DTB, 2017 WL 3457113,
12 at *1 (C.D. Cal. Feb. 28, 2017) (internal quotation omitted); *see also Pac. Reinsurance Mgmt. Corp.*
13 *v. Ohio Reinsurance Corp.*, 935 F.2d 1019, 1027 (9th Cir. 1991) (“Generally the purpose of a
14 supersedeas bond is to secure the appellees from a loss resulting from the stay of execution and a full
15 supersedeas bond should therefore be required.”) (internal quotation omitted).

16 Although district courts have discretion to stay execution of a judgment without requiring a
17 bond, “an unsecured stay is reserved for unusual circumstances[,] and the moving party has the burden
18 to objectively demonstrate the reasons for departing from the general bond requirement.” *Rivas*, 2017
19 WL 3457113, at *1 (internal quotation omitted); *see Hardesty v. Sacramento Metro. Air Quality*
20 *Mgmt. Dist.*, No. 2:10-cv-02414-KJM-KJN, 2019 WL 2715616, at *3 (E.D. Cal. June 28, 2019)
21 (similar). In setting the amount of the bond or other appropriate security, the courts are guided by
22 equitable principles, with the “overarching purpose being to safeguard the judgment creditors as
23 completely as possible without irreparably injuring the judgment debtors.” *Abbywho, Inc.*, 2008 WL
24 11406049, at *3 (internal quotation omitted). If the judgment debtor is unable to post a full bond, “it
25 is the *judgment debtor’s responsibility* to convince the court that posting a full bond is impracticable
26 and to propose an alternative plan that would sufficiently guarantee the judgment creditor’s interests.”
27 *Id.* (internal quotation omitted) (emphasis added).

28 Here, accordingly, the ordinary rule is that Plaintiffs are entitled to begin executing the nearly

1 \$2.5 million judgment in their favor on May 29, 2020, 30 days after the judgment was entered. If
2 Moving Defendants wish to stay execution past that date, it is their responsibility either to post a full
3 supersedeas bond—which they acknowledge would be around “1.2 times the judgment,” Mot. at 6—
4 or to put forward convincing reasons showing the Court why, under the circumstances, a full bond is
5 not necessary to protect Plaintiffs’ ability to collect.

6 **II. MOVING DEFENDANTS HAVE NOT SHOWN THAT WAIVING OR**
7 **REDUCING THE BOND REQUIREMENT WOULD ADEQUATELY PROTECT**
8 **PLAINTIFFS’ ABILITY TO COLLECT.**

9 In determining whether to grant a judgment debtor’s request to stay of execution without
10 fulfilling the ordinary requirement to post a full supersedeas bond, courts generally consider five
11 factors: (i) the complexity of the collection process; (ii) the amount of time required to obtain a
12 judgment after it is affirmed on appeal; (iii) the degree of confidence that the district court has in the
13 availability of the funds to pay the judgment; (iv) whether the defendant’s ability to pay the judgment
14 is so plain that the cost of a bond would be a waste of money; and (v) whether the defendant is in
15 such a precarious financial position that the requirement to post a bond would place other creditors
16 of the defendant in an insecure position. *See, e.g., Cotton*, 860 F. Supp. 2d at 1028. Here, all of those
17 factors support enforcing the ordinary bond requirement—collection will be complex and time-
18 consuming, there is considerable doubt that the defendants will ever satisfy the judgment, and Moving
19 Defendants have not identified even a *single* existing creditor that would be harmed. Moving
20 Defendants argue that the Court should waive or reduce the bond requirement in light of the first,
21 second, and fifth factors, as well as the supposed “equities.” Mot. at 4-7. But those arguments distort
22 the case law and the facts, while giving short shrift to the one equitable consideration that is the
23 touchstone for the Court’s entire inquiry—Plaintiffs’ interest in seeing that this Court’s judgment in
24 their favor is satisfied in full.

25 **A. Factors (1) And (2): The Complexity and Difficulty of Collection Favor**
26 **Enforcing the Bond Requirement.**

27 Moving Defendants affirmatively assert that they do not currently possess assets sufficient to
28 satisfy the judgment against them. *See* Mot. at 5-6. As a threshold matter, however, Moving
Defendants’ representations about their ability to pay are carefully cabined to the Moving Defendants

1 themselves. Moving Defendants make no representations whatsoever about *Nonmoving Defendants'*
2 ability to pay. And most of the judgment is a joint and several liability of All Defendants, including
3 both the Moving and Nonmoving Defendants. Moving Defendants thus never even assert, much less
4 convincingly show, that it would be impossible or impractical for All Defendants together to post a
5 bond covering the entire amount of the judgment.

6 In any event, even limiting the analysis to Moving Defendants alone, Moving Defendants
7 make clear that, “should the Judgment be affirmed in full on appeal, there is no way for [them] to pay
8 it,” and they “cannot ... make a commitment that they will pay the judgment in full after the appeals
9 are exhausted.” Mot. 5. Moving Defendants thus candidly admit that they cannot fulfill the usual
10 bargain underlying a stay of execution, whereby “a plaintiff who has won in the trial court should not
11 be put to the expense of defending his judgment on appeal unless the defendant takes reasonable steps
12 to assure that the judgment will be paid if it is affirmed.” *Id.* (quoting *Lightfoot v. Walker*, 797 F.2d
13 505, 506-07 (7th Cir. 1986)). Because the collection process here undisputedly will be arduous,
14 potentially involving years of garnishments and searching for and seizing assets, Plaintiffs are entitled
15 to begin that process now, or be protected by a sufficient bond, rather than waiting for all appeals to
16 be exhausted. This is particularly true where the judgment provides a remedy for injuries that arose
17 over five years ago, as requiring Plaintiffs “to wait several more years until [Moving Defendants]
18 ha[ve] exhausted the appeals process would further prejudice them.” *Soares v. Lorono*, No. 12-cv-
19 05979-WHO, 2015 WL 1247020, at *3 (N.D. Cal. Mar. 18, 2015) (Orrick, J.) (denying request for a
20 stay of judgment without posting a supersedeas bond).

21 The most Moving Defendants can offer is that, while their assets “will not be enough to satisfy
22 the Judgment, ... they [supposedly] will be easy enough to seize.” Mot. at 5. That response—already
23 weak on its own terms—is unavailing on multiple levels. To begin with, Moving Defendants
24 themselves assert that “BioMax has no assets.” Mot. at 5. They further admit that Lopez has no
25 assets “that could be effectively seized,” and that additional procedural hurdles must be cleared before
26 his military wages can be garnished. Mot. at 7; *see* 32 C.F.R. pt. 113. Moving Defendants also
27 repeatedly raise the specter of bankruptcy, which would inevitably complicate any collection effort.
28 *See Soares*, 2015 WL 1247020, at *2 (“[C]ollecting from a party having financial hardships (whether

1 now or later) is difficult, complex, and costly”) (quoting *Inhale, Inc. v. Starbuzz Tobacco, Inc.*,
2 No. 2:11–CV–3838–ODW, 2013 WL 361109, at *2 (C.D. Cal. Jan. 30, 2013)). And in Daleiden’s
3 declaration, the only assets Daleiden identifies as belonging to himself and CMP are almost entirely
4 liquid, and thus could be easily transferred or dissipated at a moment’s notice, leaving Plaintiffs with
5 nothing. Declaration of David Daleiden in Support of Defendants Motion to Set a Bond Amount to
6 Stay Enforcement of the Judgment (“Daleiden Decl.”) ¶¶ 4, 6. Indeed, Moving Defendants positively
7 trumpet that Daleiden and CMP intend to use all of their available assets not to pay Plaintiffs’
8 judgment, but instead to pay for future legal fees in other litigation—including affirmative civil
9 litigation brought against Plaintiff PPFA and others associated with Planned Parenthood as part of
10 their continued campaign against Planned Parenthood. *See* Mot. at 7-8 & n.4.

11 **B. Factors (3) and (4): Moving Defendants’ Asserted Inability To Pay Favors**
12 **Enforcing the Bond Requirement.**

13 Moving Defendants’ motion does not separately address the third and fourth factors courts
14 typically consider. Moving Defendants thus concede (1) that the Court can have little “confidence”
15 if any “in the availability of funds to pay the judgment,” (2) that Moving Defendants’ “ability to pay
16 is” not “plain,” and (3) that those facts weigh in favor of enforcing the ordinary bond requirement.
17 *Cotton*, 860 F. Supp. 2d at 1028 (quotation marks omitted).

18 That said, Moving Defendants’ asserted inability to pay rests on supposedly having “laid out
19 all of their assets for examination by the Court and Plaintiffs.” Mot. at 5. But Moving Defendants’
20 declarations are unaccompanied by supporting documentation, and some of their claims are facially
21 suspect based on their own trial testimony and accounting documents produced during this litigation.

22 Daleiden asserts in his declaration, for example, that [REDACTED]

23 [REDACTED] and that [REDACTED]

24 [REDACTED] Daleiden Decl. ¶ 4. But Daleiden testified at trial about the “police-quality undercover
25 equipment” CMP used to surreptitiously record Plaintiffs’ staff members. *See, e.g.*, Tr. 2168:2-4.
26 Daleiden never explains why these presumably expensive recording devices are not identified as
27 assets of CMP. Similarly, CMP’s 2016 and 2017 Forms 990 show that CMP paid \$225,000 and
28 \$130,000 in 2016 and 2017, respectively, in cash to its supposedly “pro bono” counsel of record,

Freedom of Conscience Defense [Fund], Mot. at 7, for unspecified “support of educational initiatives.”³ And Daleiden admits that [REDACTED]

[REDACTED] Daleiden Decl. ¶ 4. In light of those facts, Daleiden’s claim that CMP [REDACTED] rings hollow. *Id.* at ¶ 8. To the extent the Court has any doubts about the “bare, unsupported assertions” in Moving Defendants’ declarations, *Jang v. Sagikor Life Ins. Co.*, No. ED CV 171563 JGB KXX, 2019 WL 6434766, at *4 (C.D. Cal. July 10, 2019), those doubts weigh strongly against waiving or reducing the ordinary bond requirement.

C. Factor (5): Moving Defendants' Failure To Identify Other Existing Creditors Favors Enforcing the Bond Requirement.

The fifth factor courts typically consider concerns “whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.” *Cotton*, 860 F. Supp. 2d at 1028. While Moving Defendants assert that this factor favors waiving or reducing the bond requirement, neither their motion nor their supporting declarations identifies even a *single* creditor that would be burdened if Moving Defendants were required to post a full bond. Daleiden asserts in his declaration that he has [REDACTED]

[REDACTED]

[REDACTED] See Daleiden Decl. ¶ 6. The closest the moving defendants come to identifying any other creditor is when CMP, BioMax, and Daleiden argue that they need all of their available assets to pay their attorneys for future litigation efforts. Mot. at 7-8. However, their attorneys are not current creditors for *future* legal fees.

Rather than identifying any other current creditor who would be harmed, Moving Defendants instead rely on a generalized (purported) inability to afford a bond. *See* Mot. 5-7. Mere inability to pay, however, even if credited, simply is not a valid basis for waiving or reducing the bond requirement. Indeed, “[t]he fact that [Moving Defendants] ‘do[] not have sufficient liquid assets’ to cover the [judgment] is precisely why [they] must post a supersedeas bond.” *Soares*, 2015 WL 1247020, at *3 (quoting *Inhale, Inc.*, 2013 WL 361109, at *2).

³ See https://990s.foundationcenter.org/990_pdf_archive/462/462252984/462252984_201612_990.pdf (2016 Form 990) and https://990s.foundationcenter.org/990_pdf_archive/462/462252984/462252984_201712_990.pdf (2017 Form 990).

1 **III. THE EQUITIES SUPPORT ENFORCING THE ORDINARY REQUIREMENT**
2 **THAT MOVING DEFENDANTS POST A FULL BOND.**

3 Beyond the traditional factors courts typically consider, Moving Defendants also argue that
4 “equity favors lowering the bond requirement to \$0.00.” Mot. at 7-9. But there would be nothing
5 equitable about allowing Moving Defendants to obtain a stay of execution while providing Plaintiffs
6 with no assurance whatsoever that they will ultimately be able to collect. Indeed, such a holding
7 would frustrate the “purpose” of the bond requirement—“to safeguard the judgment creditors as
8 completely as possible without irreparably injuring the judgment debtors.” Mot. at 7 (quoting
9 *Abbywho*, 2008 WL 11406049, at *3). Each of Moving Defendants’ three “equitable” arguments is
10 utterly without merit.

11 First, Moving Defendants contend that it would be inequitable to require Lopez to post a bond
12 because military regulations would bar Plaintiffs from garnishing Lopez’s wages until any appeals
13 are exhausted in any event. Mot. at 7. To the extent that is true, it cuts the other way. If Moving
14 Defendants are correct, then Lopez does not *need* a stay of execution to protect his wages from
15 garnishment, so no harm would result from enforcing the ordinary bond requirement. Regardless,
16 Lopez admits that he has some limited other assets beyond his wages that Plaintiffs could seize in the
17 meantime. *See* Declaration of Gerardo Adrian Lopez in Support of Defendants Motion to Set a Bond
18 Amount to Stay Enforcement of the Judgment.

19 Second, Moving Defendants contend that it would be inequitable to require CMP, BioMax,
20 and Daleiden to post a bond because of other pending litigation in which they are involved. Moving
21 Defendants first point to three pending civil cases against CMP and/or Daleiden, in which “CMP
22 expects it will need substantial funds to keep defending itself.” Mot. at 7. But Moving Defendants
23 note that they “have received pro bono representation” in this case, *id.*, and never explain why they
24 could not obtain such representation in other cases as well. In any event, there is no right to counsel
25 in civil litigation, let alone a right to pay counsel by shielding funds from a proper judgment creditor.
26 Moving Defendants also reference a criminal case pending against Daleiden, suggesting that “[i]f
27 Plaintiffs collect now, they will not simply be forcing CMP and Daleiden into bankruptcy, [but] will
28 be forcing Daleiden into prison.” Mot. at 8. But of course, Daleiden will not go to prison unless he
 is validly convicted of a committing a crime. And under the Sixth Amendment, if CMP and Daleiden

1 cannot afford counsel for Daleiden, the State will provide counsel for him. *See Gideon v. Wainwright*,
2 372 U.S. 335 (1963).

3 Most gallingly, Moving Defendants also point to two pending civil cases that CMP is
4 affirmatively pursuing against Plaintiff PPFA and others associated with Planned Parenthood. Mot.
5 at 8 n.4. According to Moving Defendants, “[i]t would be equally inequitable” to require CMP and
6 Daleiden to post a bond “before they can vindicate their rights in those cases.” *Id.* Those civil cases,
7 however, are part and parcel of CMP and Daleiden’s larger campaign against Plaintiffs, whose
8 “objective” is “creating ‘maximum negative impact—legal, political, professional, public—on
9 [Planned Parenthood]’ and to ‘create public outrage towards’ Planned Parenthood.” Dkt. No. 1073
10 at Finding of Fact No. 3.⁴ In other words, having been found to have perpetrated their campaign
11 against Plaintiffs through a fraudulent and unlawful scheme, CMP and Daleiden now ask the Court
12 to absolve them of the ordinary requirement to post a bond so that, instead of using their assets to
13 provide assurance that Plaintiffs can collect on their judgment post-appeal, CMP and Daleiden can
14 use their assets to continue harming Plaintiffs. Nothing could be more contrary to principles of equity.
15 Plaintiffs should not be forced to defend themselves and their staff against meritless lawsuits funded
16 by the very same assets that should secure payment of the judgment if affirmed.

17 Third, Moving Defendants argue that the Court should waive the bond requirement because
18 this supposedly is a “public interest case.” Mot. at 8-9. But this is not a “public interest case.” As
19 the Court noted on the first day of trial: “In this case, the parties are on either side of our country’s
20 long-standing debate over abortion. But this case is not about whether abortion is good or bad, or
21 whether Planned Parenthood’s services are good or bad. It’s about the strategies chosen and
22 employed by the defendants that resulted in the secret recording of conversations with Planned
23 Parenthood staff.” Tr. 16:12-18.

24 Moving Defendants’ cited cases are inapposite, as they all involve judgments granting

25 ⁴ The first is a lawsuit by Daleiden and CMP against Dr. Savita Ginde for defamation based on a
26 book she wrote the traumatizing experience of being targeted by Defendants. The second lawsuit
27 claims that the criminal case against certain defendants, which Judge Hite found had sufficient merit
28 to go forward after a multi-week preliminary hearing, deprives them of their civil rights. In that
second case, Daleiden and CMP have named PPFA as a defendant; it is particularly backwards that
they are pursuing a new civil action against PPFA when the parties have been engaged in the
present lawsuit for more than four years.

1 *injunctive* relief against a government agency. *See* Mot. at 8 & n.5 (citing cases). Indeed, Moving
2 Defendants acknowledge that their authorities involve “a procedurally distinct situation.” Mot. at 8.
3 This case involves a private suit brought by a group of private plaintiffs against a group of private
4 defendants, who ultimately were found liable for millions of dollars in damages for their fraudulent
5 and unlawful conduct. The amount of attorneys’ fees Moving Defendants speculate that Plaintiffs
6 have incurred, or Moving Defendants’ beliefs about Plaintiffs’ motivations for bringing this lawsuit,
7 *see* Mot. at 8-9, do not make the ordinary rules of civil litigation—including the bond requirement—
8 inapplicable.

9 **IV. MOVING DEFENDANTS HAVE NOT OFFERED A REASONABLE**
10 **ALTERNATIVE TO POSTING A FULL BOND.**

11 As the party seeking to avoid posting a full bond, Moving Defendants bear the burden to
12 “propose an alternative plan that would sufficiently guarantee the judgment creditor’s interests.”
13 *Abbywho, Inc.*, 2008 WL 11406049, at *3. Here, moving defendants propose that, if the Court refuses
14 to completely waive the bond requirement, the bond should be set at \$468,361. Mot. at 9. But, as
15 noted above, the purpose of a supersedeas bond is to protect a prevailing party “from the risk of a
16 later uncollectible judgment, and compensate them for any loss resulting from the stay of execution.”
17 *Abbywho*, 2008 WL 11406049, at *3. That is why, as Moving Defendants acknowledge, bonds are
18 generally set at a value *higher* than the judgment amount, so as to provide security for the costs
19 incurred by the judgment creditor on appeal. *See* Mot. at 6; *see also* Goetz, Batalden, & Querio, *Cal.*
20 *Prac. Guide: Ninth Circuit Civil Appellate Practice* ¶ 1:168 (The Rutter Group 2020) (“District courts
21 generally accept bonds that are sufficient to cover all monetary relief (the principal amount of the
22 judgment, costs, attorney fees, etc.) plus postjudgment interest expected to accrue based on a
23 conservative estimate of how long the appeal will last.”). The basic purpose of supersedeas bonds
24 alone thus refutes Moving Defendants’ suggestion that a bond of \$468,361—approximately 20% of
25 Plaintiffs’ judgment, before attorneys’ fees—will “protect Plaintiffs’ legitimate interests.” Mot. at 9.

26 Moving Defendants suggest that Plaintiffs’ interest in collecting upon the portions of this
27 Court’s judgment that represent nominal, statutory, trebled, or punitive damages—as opposed to
28 purely compensatory damages—are somehow not “legitimate.” *Id.* Not so. Plaintiffs are entitled to

1 collect upon each and every dollar of damages set forth in the judgment, regardless of what purpose
2 they may serve or what label they may bear. And, in any event, Moving Defendants are simply wrong
3 to suggest that these portions of the judgment represent an unwarranted “windfall.” Mot. at 9 (quoting
4 *Olympia Equip. Leasing Co. v. W. Union Tel. Co.*, 786 F.2d 794, 797 (7th Cir. 1986)). The Supreme
5 Court has “repeatedly acknowledged that the treble-damages provision contained in RICO is remedial
6 in nature,” being ““designed to remedy economic injury by providing for the recovery of treble
7 damages.”” *PacifiCare Health Sys., Inc. v. Book*, 538 U.S. 401, 406 (2003) (quoting *Agency Holding*
8 *Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 151 (1987)). And multiple courts of appeals have
9 recognized that RICO damages are compensatory.⁵ Similarly, “awards of statutory damages serve
10 both compensatory and punitive purposes.” *Los Angeles News Ser. v. Reuters Television Int’l, Ltd.*,
11 149 F.3d 987, 996 (9th Cir. 1998). As such, courts in this district refuse to waive the bond requirement
12 for judgments based on statutory damages. *See, e.g., Erickson Productions Inc. v. Kast*, No. 5:13-cv-
13 05472-HRL, 2016 WL 9115979, at *3 (N.D. Cal. July 22, 2016). Courts also routinely account for
14 punitive damage awards when setting supersedeas bonds so as to protect the judgment creditor’s
15 entire judgment. *See, e.g., Cotton*, 860 F. Supp. 2d at 1029 (setting bond at 125% of the full judgment,
16 including punitive damages); *see also Dugan v. Cty. of Los Angeles*, No. 2:11-cv-08145-CAS-SHx,
17 2014 WL 2986480, at *2 (C.D. Cal. July 2, 2014) (finding that “defendants have not set forth an
18 adequate basis for staying execution of the punitive damages portion of the judgment without the
19 posting of a bond.”).

20 In the end, Moving Defendants here have not met their burden to show why posting anything
21 less than a full bond would adequately protect Plaintiffs’ interests in collecting on the entirety of this
22 Court’s judgment entered in their favor.

23 CONCLUSION

24 For the foregoing reasons, Moving Defendants’ motion should be denied, and the Court

25
26 ⁵ *See In re ClassicStar Mare Lease Litigation*, 727 F.3d 473, 495 (6th Cir. 2013) (allowing
27 prejudgment interest award on RICO claim “[b]ecause RICO is essentially compensatory in
28 nature”); *Liquid Air Corp. v. Rogers*, 834 F.2d 1297, 1310 n. 8 (7th Cir. 1987) (“Although there is
some sense in which RICO treble damages are punitive, they are largely compensatory in the
special sense that they ensure that wrongs will be redressed in light of the recognized difficulties of
itemizing damages.”).

1 should deny any stay of execution of its judgment unless and until a full supersedeas bond is posted.

2
3 May 27, 2020

Respectfully submitted:

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